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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,662	07/20/2001	Ziya Aral	DAT-0002	2628
23353 7590 03/07/2007 RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			EXAMINER TRAN, NGHI V	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 03/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/910,662

Applicant(s)

ARAL ET AL.

Examiner

Nghi V. Tran

Art Unit

2151

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 15 February 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: None.  
Claim(s) rejected: 1-11 and 18-26.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**ZARNI MAUNG**

**SUPERVISORY PATENT EXAMINER**

Part of Paper No. 20070305

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant's argument is not persuasive because this is not commensurate with the scope of the claim. There is no limitation in the claim that indicate "encapsulation of an exact copy of write transactions within the file system files".

In response to applicant's argument that Srinivasan system does not retain exact copies of write transactions. The Examiner respectfully disagree because Srinivasan teaches intercepting I/O transactions [=write commands] [i.e. a remote mirroring facility 30 which transmit the write commands, see fig.1 and col.5, ll.17-36].

In response to applicant's argument that Srinivasan system does not retained exact copy of of write tranaction is stored within a series of files that are created on a file-sytem of local storage systems. The Examiner respectfully disagree because Srinivasan teaches retained exact copy [= maintains] of of write transaction [= write commands] is stored within a series of files [= dataset] that are created on a file-sytem of local storage systems [i.e. the rprimary data storage system 20 stores a dataset 41 in primary storage, see col5, ln.36 through col.6, ln.50]. Further, the "dataset" of Srinivasan is a series of files, not I/O transaction and/or write transaction. The "I/O transactions" and/or "write transaction" is "write commands".

In response to applicant's argument that the series of files is transmitted to the remote storage system using a non-propriety network protocol to accommodate an exact reproduction of series of write transactions at the remote storage system. The Examiner respectfully disagree because Srinivasan teaches the series of files is transmitted to the remote storage system using a non-propriety network protocol [= transmission link, 22] to accommodate an exact reproduction of series of write transactions at the remote storage system [figs.1 and 8]. For instance, Srinivasan teaches a conventional dedicated line that is an example of non-propriety network protocol.

In addition, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F. 2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant obviously attacks references individually without taking into consideration based on the teaching of combinations of references as show in the above.